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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/574,441	05/19/2000	J. Stuart Cumming	5891	8630

7590

01/09/2002

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EXAMINER

WILLSE, DAVID H

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 01/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicant N .

09/574,441

Applicant(s)

CUMMING, J. STUART

Examiner

Dave Willse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2001.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 8, and 27-30 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Turley, US 4,892,543, which discloses a frame 60 having haptics 70 and 72 extending oppositely, the frame being configured to vault posteriorly (Figures 2 and 6; column 4, lines 39-54). The frame has end portions 74 to engage in the periphery of the capsular bag (column 4, lines 18-20). A peripheral flange 68 of the frame defines a generally circular opening and engages with an optic 84 (column 3, lines 61-65). Regarding claims 2-4, the optic being about 1.0 mm in thickness, particularly when the optic membrane 86 conforms to the convex template surface 50 (Figure 6; column 4, lines 48-54), is evident from the 0.15 mm spacing (column 4, lines 32-34) depicted in Figure 2. Regarding claim 30, the frame members may alternatively be viewed as the arms 54 (column 3, lines 54-57).

Claims 27-29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Smith, US 4,704,123.

Claims 1, 2, 5-13, and 16-30 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Guilbert et al., FR 2 728 459 A1, which discloses a frame 28 having bridges 31

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extending oppositely to engage peripheral portions of a capsular bag, the frame being configured to vault posteriorly (Figure 2). Various types of interengaging features for attachment of an optic to the frame are illustrated in the drawings. Regarding claim 24, the haptics may optionally be viewed as comprising those frame portions that extend in opposite directions to define the narrow and oblique aperture (Derwent abstract, lines 7-8; Figures 7, 9, and 10).

Claims 3, 4, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guilbert et al., FR 2 728 459 A1. The particular thickness would have been obvious from the anatomical representation of Figure 2 and in order to facilitate insertion through an incision of "not more than 3 mm" (Derwent abstract, last line). Also, the double supporting ring is said to be "1.5-2.5 mm in size" (Derwent abstract, line 4), and the drawings suggest that the optic thickness is smaller than said size.

#### Response to Applicant's Arguments

By definition, an "opening" is "[a]n open space affording passage or view: APERTURE" (*Webster's II New Riverside University Dictionary*, 1984). In Turley, the frame 60 defines an opening in its posterior surface to allow for passage of an optic 84 for engagement therewith. The opening lies between inner portions of the haptic fingers 70 and 72, as seen from Figure 3. Regarding instant claim 27, by definition a "web" is "[a] metal sheet or plate connecting the heavier sections, ribs, or flanges of a structural element" (*ibidem*). Thus the web of Turley may comprise elements 62, 64, 70, or 72, for example. In the case of Smith, the web may comprise the support portions 42, 44, 56, and 58, with the pair of frame members comprising elements 32, 38, 40 and 50, 52, 54. In Guilbert et al., diametrically opposed bridges 31 (as depicted in Figure

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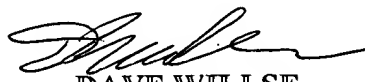
5, for example) are seen as oppositely extending haptics; moreover, the double ring itself extends in opposite directions to define the narrow and oblique aperture 15 (e.g., Figure 3).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse, whose telephone number is (703) 308-2903 and who is generally available Monday through Thursday during most of each day. The supervisor, Corrine McDermott, can be reached at (703) 308-2111. The receptionist's phone number is (703) 308-0858, and the main FAX numbers are (703) 305-3591, 3590.

dhw: D. Willse  
January 7, 2002

  
**DAVE WILLSE**  
**PRIMARY EXAMINER**  
**ART UNIT 3738**